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5 UNITED STATES DISTRICT COURT  
6 DISTRICT OF NEVADA

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8 SARA MARIA SCHAETZL-SAUBERT,

Case No. 2:17-cv-00854-MMD-VCF

9 Plaintiff,

ORDER

10 v.

11 TURKISH AIRLINES, INC.,

12 Defendant.

13 **I. SUMMARY**

14 This case concerns alleged injuries arising from the delay and rerouting of certain  
15 international flights taken by Plaintiff in 2015. Before the Court is Defendant Turk Hava  
16 Yollari's<sup>1</sup> Motion for Judgment on the Pleadings. (ECF No. 11.) The Court has reviewed  
17 Plaintiff's response (ECF No. 15) and Defendant's reply (ECF No. 20). For the reasons  
18 discussed below, Defendant's Motion is granted for lack of personal jurisdiction.

19 **II. BACKGROUND**

20 The following facts are taken from the complaint. (ECF No. 1 at 13-23.)

21 Plaintiff purchased an airline ticket for a Turkish Airlines flight from Munich,  
22 Germany to Los Angeles, California, to depart on February 18, 2015. The flight was  
23 scheduled to have a layover in Istanbul, Turkey. Plaintiff checked in for the flight but  
24 learned its scheduled departure time had been delayed by several hours. Eventually  
25 Plaintiff departed Munich. Upon arriving in the airspace above Istanbul for the  
26 scheduled layover, the airplane remained in the air for 45 minutes, circling the airport,

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28 <sup>1</sup>Defendant was improperly sued as "Turkish Airlines Inc." (ECF No. 20 at 1.)

1 until the pilot informed the passengers that the Istanbul airport had just closed and the  
2 airplane would instead land in Antalya, Turkey. At the Antalya airport, Plaintiff waited for  
3 several hours before she was informed she would have to stay overnight in a hotel. She  
4 then waited for several more hours before receiving a hotel voucher. At the hotel, there  
5 was a problem regarding Plaintiff's reservation—the airline had reserved one room for  
6 her to share with a married man she did not know—and she waited for at least two  
7 hours after being told that an airline representative would come to the hotel to fix the  
8 problem. However, because no airline representative came, Plaintiff and the man  
9 decided to share the room, planning to have the man sleep on the couch. Upon arriving  
10 at the hotel room, no couch was present. Plaintiff laid down on the bed fully dressed but  
11 was unable to sleep. Plaintiff called the front desk of the hotel three times between  
12 midnight and 6 am to inquire if the airline representative had arrived but was informed  
13 the no representative had arrived. Plaintiff then headed to the Antalya airport around  
14 6am, waited in line for another 2 hours, and was then booked on a flight to Istanbul at  
15 noon. However, that flight's departure time ended up being delayed by 3 hours, making  
16 Plaintiff miss her connection in Istanbul to Los Angeles. Plaintiff attempted to get a hotel  
17 voucher at the airport in Istanbul but after waiting in line for 2 hours decided to meet her  
18 father, a resident of Istanbul, at a hotel instead. She spent the night in the hotel,  
19 although she was unable to sleep. She was able to fly home on Turkish Airlines to Los  
20 Angeles the next day. She states that over the course of at least 2 days of air travel  
21 from Munich to Los Angeles, she was able to sleep for only 2 hours. (ECF No. 1 at 19.)

22 Plaintiff states that as a result of these series of events, she suffered panic  
23 attacks at least once a day, was unable to sleep, and had nightmares. (*Id.* at 20.)  
24 Ultimately, on February 28, 2015, she went to the emergency room where she was  
25 diagnosed with Generalized Anxiety Disorder and given a strong psychotropic  
26 medication. She subsequently went to her primary care physician, who diagnosed her  
27 with depression, panic attacks, and insomnia, and prescribed Plaintiff a daily medication  
28 that she now takes. Plaintiff has also visited chiropractors for relief from muscle spasms

1 caused by panic attacks and has tried hypnotherapy. She states that on March 23,  
2 2015, she was diagnosed with Post-Traumatic Stress Disorder. (*Id.*) She also states  
3 that she suffered a stroke as a result of these events. (*Id.*)

4 The complaint asserts four claims for relief under Nevada law: (1) breach of  
5 contract; (2) negligence; (3) negligent infliction of emotional distress; and (4) intentional  
6 infliction of emotional distress. (ECF No. 1 at 20-22.) Defendant moves for judgment on  
7 the pleadings, asserting several grounds for dismissal. (ECF No. 11.) Because the  
8 Court agrees with Defendant's personal jurisdiction argument, the Court declines to  
9 address the remaining grounds.

### 10 **III. LEGAL STANDARD**

11 A motion for judgment on the pleadings is "functionally identical" to a Rule  
12 12(b)(6) motion. *See United States ex rel. Cafasso v. Gen. Dynamics C4 Sys., Inc.*, 637  
13 F.3d 1047, 1054 n.4 (9th Cir. 2011). Where the motion tests the personal jurisdiction of  
14 the court, the plaintiff bears the burden of establishing that jurisdiction is proper.  
15 *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008). Where, as here, the  
16 defendant's motion is based on written materials rather than an evidentiary hearing, "the  
17 plaintiff need only make 'a prima facie showing of jurisdictional facts to withstand the  
18 motion to dismiss.'" *Brayton Purcell LLP v. Recordon & Recordon*, 606 F.3d 1124, 1127  
19 (9th Cir. 2010) (quoting *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir.  
20 2006)). The plaintiff cannot "simply rest on the bare allegations of its complaint," but  
21 uncontroverted allegations in the complaint must be taken as true. *Schwarzenegger v.*  
22 *Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (quoting *Amba Mktg. Sys.,*  
23 *Inc. v. Jobar Int'l, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977)). The court "may not assume  
24 the truth of allegations in a pleading which are contradicted by affidavit," *Data Disc, Inc.*  
25 *v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977), but it may resolve  
26 factual disputes in the plaintiff's favor. *Pebble Beach Co.*, 453 F.3d at 1154.

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#### 1 IV. DISCUSSION

2 A two-part analysis governs whether a court retains personal jurisdiction over a  
3 nonresident defendant. “First, the exercise of jurisdiction must satisfy the requirements  
4 of the applicable state long-arm statute.” *Chan v. Soc’y Expeditions*, 39 F.3d 1398, 1404  
5 (9th Cir. 1994). Since “Nevada’s long-arm statute, NRS [§] 14.065, reaches the limits of  
6 due process set by the United States Constitution,” the Court moves on to the second  
7 part of the analysis. See *Baker v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 999  
8 P.2d 1020, 1023 (Nev. 2000). “Second, the exercise of jurisdiction must comport with  
9 federal due process.” *Chan*, 39 F.3d at 1404-05. “Due process requires that nonresident  
10 defendants have certain minimum contacts with the forum state so that the exercise of  
11 jurisdiction does not offend traditional notions of fair play and substantial justice.” *Id.* at  
12 1405 (citing *Int’l Shoe v. Washington*, 326 U.S. 310, 316 (1945)). Courts analyze this  
13 constitutional question with reference to two forms of jurisdiction: general and specific  
14 jurisdiction.

15 Plaintiff argues that this Court has general jurisdiction<sup>2</sup> over Defendant because  
16 Defendant makes available sales of flights to inhabitants of Nevada through its  
17 interactive website and Defendant has flight arrangements with partnered airlines that  
18 travel to Nevada. (See ECF No. 15 at 4-5.) The Court disagrees and finds this is  
19 insufficient to make out a prima facie case for general jurisdiction.

20 The exercise of general jurisdiction over a foreign corporation is proper only  
21 where the corporation is “essentially at home” in the forum state. *Daimler AG v.*  
22 *Bauman*, 134 S. Ct. 746, 754 (2014). Generally, a corporation is “at home” in its place of  
23 incorporation and its principal place of business. *Id.* at 760. Defendant is a Turkish  
24 corporation with its principal place of business in Istanbul, Turkey, although it has a  
25 registered agent in Los Angeles, California. (ECF No. 20 at 3; ECF No. 11 at 23, 32.)  
26 Moreover, Defendant states that it “is not registered or authorized to do business in

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27 <sup>2</sup>Plaintiff’s response focuses solely on general jurisdiction thereby conceding that  
28 there is no specific jurisdiction over Defendant in the state of Nevada.

1 Nevada”; “does not maintain an agent for service of process in Nevada”; “has not  
2 consented to suit in Nevada”; “does not maintain any offices in Nevada or employees,  
3 property, or bank accounts in Nevada”; “does not pay taxes in the State of Nevada”;  
4 “and does not operate flights to or from Nevada.” (ECF No. 20 at 3-4.) Plaintiff’s  
5 opposition ignores the test set forth in *Daimler* and instead argues that Defendant’s  
6 interactive website and code-share arrangements with other airlines that fly directly to  
7 and from Nevada make Defendant’s forum contacts “continuous and systematic.”  
8 However, the “continuous and systematic” standard under the general jurisdiction  
9 analysis has been qualified to mean that those contacts must make the foreign  
10 corporation essentially at home in the forum state. *Daimler*, 134 S. Ct. at 754.

11 Having arrangements with partner airlines to fly from cities within the United  
12 States to Las Vegas is insufficient to make Defendant essentially at home in the state of  
13 Nevada. Similarly, having an interactive website that individuals may access while in  
14 Nevada does not make Defendant essentially at home in the state; if it did, this would  
15 mean that Defendant could be subject to personal jurisdiction in any state where an  
16 individual is able to access its website. This is inconsistent with both the Supreme  
17 Court’s decision in *Daimler* as well as Ninth Circuit precedent. See *Daimler*, 134 S. Ct.  
18 at 760-61 (“Plaintiff would have us . . . approve the exercise of general jurisdiction in  
19 every State in which a corporation engages in a substantial, continuous, and systematic  
20 course of business. That formulation, we hold, is unacceptably grasping.”) (internal  
21 quotation marks and citation omitted); see, e.g., *CollegeSource, Inc. v. AcademyOne,*  
22 *Inc.*, 653 F.3d 1066, 1075-76 (9th Cir. 2011) (“If the maintenance of an interactive  
23 website were sufficient to support general jurisdiction in every forum in which users  
24 interacted with the website, the eventual demise of all restrictions on the personal  
25 jurisdiction of state courts would be the inevitable result.”) (internal quotation marks

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1 omitted). Thus, the Court finds that Plaintiff has failed to meet her prima facie burden of  
2 establishing that general jurisdiction over Defendant in the state of Nevada is proper.<sup>3</sup>


3 **V. CONCLUSION**

4 The Court notes that the parties made several arguments and cited to several  
5 cases not discussed above. The Court has reviewed these arguments and cases and  
6 determines that they do not warrant discussion as they do not affect the outcome of  
7 Defendant's Motion.

8 It is therefore ordered that Defendant's Motion for Judgment on the Pleadings  
9 (ECF No. 11) is granted. Claims against Defendant are dismissed for lack of personal  
10 jurisdiction.

11 The Clerk is directed to enter judgment in accordance with this Order and close  
12 this case.

13 DATED THIS 7<sup>th</sup> day of March 2018.

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16 MIRANDA M. DU  
17 UNITED STATES DISTRICT JUDGE  
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20 <sup>3</sup>To the extent the parties argue that the Montreal Convention governs Plaintiff's  
21 claims, the complaint does not unequivocally and properly base its requested relief on  
22 that Convention, nor is the issue of preemption properly before this Court. Moreover, it  
23 is unclear whether the Convention preempts Plaintiff's action such that this Court has  
24 federal question jurisdiction over the complaint (although the Court clearly has diversity  
25 jurisdiction over this action based on the state law claims, citizenship of the parties, and  
26 amount in damages). Specifically, it is unclear whether Article 19 of the Montreal  
Convention—which governs “damage occasioned by delay in the carrier” and not  
necessarily the air carrier's non-performance of a contract, see *Nankin v. Cont'l Airlines,*  
*Inc.*, No CV 09-07851 MMM (RZx), 2010 WL 342632, at \*7 (C.D. Cal. Jan. 29, 2010), or  
emotional harms caused by delay, see *Seshadri v. British Airways PLC*, No. 3:14-cv-  
00833-BAS (WVG), 2014 WL 5606542, at \*11 (S.D. Cal. Nov. 4, 2014)—applies to the  
full scope of injuries alleged in the complaint such that the state law claims are  
completely preempted by the Convention.

27 However, nothing in the Court's order precludes Plaintiff from filing a new  
28 complaint under the Montreal Convention if she so chooses subject to Fed. R. Civ. P.  
4(k)(2).